IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Bail Appl..No. 6538 of 2007()

CRIME NO. 337/07 OF NADAKKAVU POLICE STATION

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PETITIONER/ACCUSED

B.S.GOPAKUMAR, AGED 51 YEARS
S/O. BALAN NAIR," SUKUMARAM"
P.O. MEDICAL COLLEGE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.T.R.RAVI

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/11/2007, ALONG WITH BA NO. 6600 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 6538 & 6600 of 2007

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Dated this the 22nd day of November, 2007

O R D E R

These applications are for anticipatory bail. The petitioners are the Manager and Asst. Manager of a bank having its branch at Kozhikode. They have not been arrayed as accused so far in the crime. But they apprehend that they may be arrested by the Investigating Officer. Interim directions were issued and accordingly the petitioners had appeared before the Investigating Officer and they have been questioned.

2. The crime has been registered on the basis of a complaint of the present Manager of the Bank. The crux of the allegations is that a customer of the bank had an account in the bank, which had remained without operation for a fairly long period of time. Some person, who came to know that the said account was remaining non-operational and a huge amount was available in the said account, resorted to the dubious method of making some insignificant deposit in the said account to make it

operational. Subsequently an amount of Rs.5 lakhs, which was remaining in the account, was siphoned out of the account by making use of a forged withdrawal slip purportedly issued by the account holder. The account holder later issued a cheque to his son-in-law for an amount of Rs.25,000/- But that cheque was dishonoured on the ground of insufficiency of funds. It is at that stage that the account holder verified the account and found the fraud committed. He made a complaint. The bank made enquiries and accordingly crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submit that each of them is not responsible for the commission of the crime. They contend that the other or some others may have resorted to the fraudulent method to take away funds from the account of the account holder. They contend that they are not the ones who have resorted to this culpable conduct. They are respectable employees of the bank.

The then Manager - petitioner in B.A. 6538 of 2007 - submits that the bank had never doubted his honesty. In fact the bank has, recognising his efficiency in the work, posted him in the Inspection Wing of the bank. The petitioner in B.A. 6600 of 2007, who was the Asst. Manager at the relevant time, submits that he was not even present in the bank on the date when the amount was siphoned out of the account. Both of them contend that they are not responsible for the commission of the offence.

4. The learned Prosecutor submits that at the moment the petitioners have not been arrayed as accused. They were questioned when they appeared before the Investigating Officer as per the interim directions issued by the Court. The Investigating Officer is only further investigating the matter. No definite conclusion has been drawn. A non-operational account cannot be made operational except with the orders/approval of the officials of the bank. Ordinarily and normally it is unlikely that an outsider would know that an account is

inoperative and amounts were there in the account. Some one, who knows the procedure is either primarily or secondarily responsible for the commission of the offence, it is suspected. The learned Prosecutor submits that a proper and efficient investigation shall be conducted. The petitioners shall be arrested only if sufficient materials are gathered against them. They need not apprehend any vexatious action against them. But they may not be permitted to arm themselves with an order of anticipatory bail at this stage, as such course would hamper the smooth course of the investigation. In the facts and circumstances of this case neither petitioner is entitled to the invocation of the extra ordinarily equitable discretion under Section 438 Cr.P.C., submits the learned Prosecutor.

5. I have considered all the relevant inputs. The case diary has been placed before me for my perusal. I find merit in the opposition by the learned Prosecutor. I am of the opinion that it is not necessary to issue directions under Section 438 Cr.P.C. in favour of either

petitioner at this stage. I am not even remotely suggesting that either of them is responsible for the commission of the offence. Suffice it to say that I am persuaded to accept the contention of the learned Prosecutor that neither petitioner is entitled for anticipatory bail at this stage.

6. These applications are accordingly dismissed.

(R. BASANT)
Judge

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